IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.92 OF 2007
IN
NOTICE OF MOTION NO.3763 OF 2006
IN
L.C.SUIT NO.4308 OF 2006
WITH
CIVIL APPLICATION NO.136 OF 2007

Hanif Chauhan ...Appellant

Versus

The Municipal Corporation of
Greater Mumbai ...Respondent

.....

Mr.J.J.Shah for Appellant.

Mrs.Geeta Joglekar for Respondent.

.....

CORAM: A.M.KHANWILKAR, J.

FEBRUARY 28, 2007.

P.C.

1. Heard Counsel for the parties.

2. The Court below after scrutiny of relevant record has returned a positive finding of fact that the suit structure was demolished after the issuance of suit notice. In other words, the Trial

Court accepted the claim of the Corporation - which is supported by contemporaneous evidence placed before the Trial Court - that the suit structure came to be demolished pursuant to the suit notice dated 26th September 2006. There is no reason to doubt the correctness of the finding so recorded by the Trial Court. If it is so, there can be no dispute that the Notice of Motion taken out by the Appellant/Plaintiff is worked out - as the relief claimed therein was to restrain the Defendants from taking any further action on the basis of the suit notice dated 26th September 2006. It will be a different matter if the Appellant/Plaintiff were to approach the Authority for permission to re-erect the structure at the same place, if permissible in law or to approach the Trial Court for further relief in the pending Suit, if so advised. The Appellant will be free to take such steps as may be advised. This Appeal, however, can be conveniently disposed of on the finding that the relief claimed in the Notice of Motion on which the impugned order came to be passed itself is worked out.

3. Appellant/Plaintiff may approach the Trial

Court for amendment of the Plaint, which request will be considered by the Trial Court on its own merits.

4. In view of the above order, companion Civil Application stands disposed of.

A.M.KHANWILKAR, J.